



OTP Liability and Insurance-Claim Trends — An Interview with Richard J. Willetts

When it comes to risk management, insurance executives and opioid treatment programs (OTPs) share a common goal: good outcomes for patients. But a good risk management and quality assurance program also means clinics need to carefully assess areas of risk to the patient, the OTP, and the community. Recently, the report of an extraordinarily high out-of-court settlement in which a Massachusetts OTP paid \$1.8 million to the family of a child who died in an automobile crash caused by a patient, also killed in the accident, circulated like wildfire throughout the OTP community (see link below). The patient was taking Klonopin (clonazepam) and trazodone, which are sedating, in addition to his prescribed methadone.

To learn more about impaired driving and insurance-claim trends in OTPs, *AT Forum* spoke with Richard J. Willetts, CPCU, ARM, program director of the Addiction Treatment Providers Insurance Program of the NSM Insurance Group in Conshohocken, Pennsylvania.

Impaired-Driving Claims

"We are very concerned about impaired-driving exposure," says Mr. Willetts, who represents liability-insurance companies. After wrongful death via adverse drug events, impaired driving is the most common type of claim against OTPs. Impaired-driving claims have increased in the past couple of years, something he attributes to the increase in attorney involvement in all methadone-related claims. "OTPs have become a target," he says.

"It's particularly important for OTPs to understand that the ramifications of not dealing with problems like driving will be worse than imposing restrictions on certain patients now," says Mr. Willetts. "I understand they're focused on their mission, which is helping patients, but if they don't deal with this now, the potential is for public reaction to lead to something like banning methadone patients from driving."

Under no circumstances think that "what you don't know won't hurt you." It's what you should know that counts — and how you act on that knowledge, says Mr. Willetts. Under well-established legal doctrine, health care providers are required to be aware of the potential for their patient to harm someone else. That's where the impairment issue comes in. If a patient is impaired and you know the patient plans to drive, you should either defer dispensing the methadone or prevent the patient from taking the wheel, he says, acknowledging that this is the view of an insurance person, not a clinical person.

The Four Cs of Risk Management

There are four "C"s for OTPs to adhere to when it comes to managing risk, according to Mr. Willetts:

- Stay Current with scientific and clinical information about methadone and best practices. To do this, go to workshops, join the American Association for the Treatment of Opioid Dependence (AATOD), participate in training sessions.
- Collect patient information during treatment.
- Communicate with the family and patient. Explain all issues surrounding induction — the most risk-intensive phase — in particular.
- Carefully document information on an event. "You live and die with the documentation after an incident."

Staff, clinicians, and dosing nurses should be trained to identify impairment, notes the insurance executive. "Some don't seem to pay as close attention as they should." Other red flags in the Massachusetts case: the OTP violated its own policy on take-homes, and the patient missed counseling sessions. "Missing sessions may not seem like a big deal, but it's a very big deal in court," says Mr. Willetts. In addition, the patient had a lengthy history of motor vehicle accidents. "That's important information that should have been collected during admission."

There are no easy solutions to this problem. In many parts of the country, patients have to drive long distances to pick up their methadone, and have no other way to obtain it. The Massachusetts case is a wake-up call, and clinics should try to help prevent impaired driving.

As OTPs know, patients stabilized on their dose of methadone are usually not sedated or impaired by it, and can safely take therapeutic doses of benzodiazepines. But that doesn't mean courts will agree with the science, says Mr. Willetts. "I hear it all the time — and I have 10 experts who can testify to that. But the person suing can get 10 experts who say the opposite."

Many OTPs don't like the idea of settling when they get a claim. "They say they didn't do anything wrong, so why do they have to pay?" He has to explain to them that the end result would be much worse if a jury were in control. "If we don't settle it for \$300,000, a jury could award \$3 million or much more. In 99 percent of these cases, settlement is out of court. Insurance companies rarely ever take these cases to trial."

Claims Involving Adverse Drug Events

A growing concern for insurers is claims related to adverse events during methadone therapy. Two general issues result in increased scrutiny of OTPs.

- Statistically significant increases in the overall number of methadone-related deaths (including those involving pain clinics)
- Increasingly negative news articles and public information about OTPs and the safety of methadone

Two overriding trends in OTP claims involving adverse drug events are an increased frequency of reported incidents and claims, and an increased severity of outcomes and settlements. As Mr. Willetts notes, many "hungry lawyers" use the internet to find plaintiffs, with impaired driving being one of the most significant new causes of action. And the greater the involvement of attorneys, the higher the claims costs.

Web Resources on Insurance Claim Trends and Impairment

Adverse Drug Event Liability and Insurance Claim Trends in OTPs

by Richard J. Willetts, CPCU, ARM. Available at:
http://ireta.org/ireta_main/omt2009_toolbox.html



Effective Strategies in Assessing Individual Impairment in Outpatient Methadone Treatment: Clinical and Legal Issues

A 1-1/2 hour webinar dealing with the legal and clinical issues of Impairment. Lisa Torres, JD, discusses the legal perspectives including associate risk, liability, variations in DUI laws and issues concerning take-home medications. Sabato Stile, MD, covers clinical perspectives and assessment for intoxication of opioids, sedatives or stimulants. Available at:
http://ireta.org/ireta_main/omt2009_toolbox.html

Changing Insurance Market

Right now, the insurance market is "soft," meaning that companies are scrambling to write policies, says Mr. Willetts. But the market is about to change. "Methadone clinics are what mortgage lenders would call subprime risks," he says, adding that in the near future, readily available and adequate insurance will be difficult to find, as companies become more aware of claims like the Massachusetts settlement for \$1.8 million.

The internet has drastically changed the environment for clinics, by whipping up anti-methadone sentiment and spawning many advertisements from lawyers. Ten years ago there was one incident a year per 100 clinics — now it's three, says the insurance executive. And the average dollar-amount for each out-of-court settlement has doubled, from \$150,000 to \$300,000.

Mr. Willetts maintains that you can't control the insurance-market cycle, but you can implement risk management strategies that make you a better risk, so when the market does change, you won't have incidents on your record. "I see the potential for a clinic to have to close because it isn't able to secure liability insurance."

Insurance-claim experience with OTPs and health care providers in general clearly shows that providing clinical care is the best way to manage liability exposure, Mr. Willetts stresses.

<http://www.timesargus.com/article/20100410/NEWS/100419999/1003/NEWS02>
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